

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LAMONT HAYNES,

Defendant-Appellant.

---

UNPUBLISHED

October 5, 2004

No. 247247

Genesee Circuit Court

LC No. 00-006935-FH

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his probation violation sentences for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and felon in possession of a firearm, MCL 750.224f,<sup>1</sup> entered after he was found guilty of violating probation. We reverse the sentences, and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At the time of defendant's original sentencing, the sentencing guidelines ranges were computed as 0 to 17 months for the drug offense and 0 to 9 months for the weapons offense. Defendant was sentenced to lifetime probation. After he was found guilty of violating his probation, the court sentenced defendant to two to twenty years' imprisonment for the drug offense,<sup>2</sup> and one to five years' imprisonment for the weapons offense. The court did not refer to the guidelines at the time of sentencing.

---

<sup>1</sup> The offenses were committed on September 28, 2000.

<sup>2</sup> The statutory guidelines of 0 to 17 months do not apply to this offense in that the drug offense contains a mandatory one year minimum. MCL 333.7401(2)(a)(iv). MCL 769.34(2)(a) provides:

If a statute mandates a minimum sentence for an individual sentenced to the jurisdiction of the department of corrections, the court shall impose sentence in accordance with that statute. Imposing a mandatory minimum sentence is not a departure under this section . . . .

This Court repeatedly held that the prior judicially established sentencing guidelines were inapplicable to probation violation proceedings. See, e.g., *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). However, this Court has held that the legislative sentencing guidelines do apply to probation violations. *People v Hendrick*, 261 Mich App 673, 681, 684; 683 NW2d 218 (2004). The *Hendrick* Court concluded that the defendant was entitled to resentencing where the sentence was above the guidelines range, and the trial court did not articulate a substantial and compelling reason for an upward departure.

Here, the trial court failed to acknowledge the sentencing guidelines. At the probation violation sentencing hearing, the trial court referenced both the tether removal violations that prompted the probation violation warrant and the conviction for criminal sexual conduct in the first degree committed after defendant tampered with his tether. The trial court, however, did not articulate whether it considered these, or any other reasons substantial and compelling enough to justify a departure from the guidelines range.” The court did not comply with MCL 769.34(2).<sup>3</sup>

Defendant’s probation violation sentences are reversed. We remand for resentencing. We do not retain jurisdiction.

/s/ Pat M. Donofrio  
/s/ Helene N. White  
/s/ Michael J. Talbot

---

<sup>3</sup> At resentencing the court should consider MCL 333.7401(3) on consecutive sentencing and in applying credits. The version in effect for sentencing purposes is 1998 PA 319, and *not* the amendments found in 2001 PA 236 and 2002 PA 665. The court should consider MCL 768.7b(2)(a) and *People v Jones*, 207 Mich App 254; 523 NW2d 888 (1994), on consecutive sentencing.